



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Century Elevator Inc.

File: B-283822

Date: December 20, 1999

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Richard P. Fowler, Esq., Proffitt and Fowler, for the John F. Kennedy Center for the Performing Arts.
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DIGEST

1. Where agency reasonably concluded that protester's proposal is not technically acceptable, agency was not required to consider proposal for award notwithstanding that protester proposed a lower price than the awardee.
2. Agency is not required to hold discussions to allow offeror to improve its proposal where solicitation advises offerors of the possibility of award without discussions.

DECISION

Century Elevator Inc. protests the rejection of its proposal and the award of a contract to Millar Elevator Services Company under request for proposals (RFP) No. JFKC01-99-R-0007, issued by the John F. Kennedy Center for the Performing Arts for elevator and escalator maintenance and repair. Century contends that its proposal should have been selected because it represented the best value to the government.

We deny the protest.

The RFP, which was issued on April 12, 1999, contemplated the award of a fixed-price contract, with a time-and-materials portion, for a base and 4 option years. The RFP provided for the evaluation of technical proposals, past performance, and price, with award to be made to the offeror whose proposal represented the best value to the government. RFP §§ M.7.1, M.8.1. Technical subfactors (corporate organization/structure; recruitment of personnel--training; quality control plan; and

resources for additional personnel and services) were worth 45 points and past performance was worth 55 points. RFP §§ M.7.2.1, M.7.2.2. The RFP stated that price would be evaluated for reasonableness, realism, and consistency with the offeror's proposal, but that it would "not be rated because the weight to be accorded price [could] be determined only after a determination of the relative merits of the proposal from a past performance/technical standpoint and the significance of the differences." RFP § M.7.2.3. The RFP advised offerors that the government might award a contract without discussions, and that their initial proposals should therefore contain their best terms from a technical and cost or price standpoint. RFP § M.8.3.

Six proposals were received by the June 4, 1999 closing date. Because it did not have staff with the expertise to evaluate the technical proposals in-house, the Kennedy Center issued a purchase order for the technical evaluation of proposals to an outside firm.¹

After reviewing the technical proposals, the evaluators determined that only two firms, Millar and Firm A (which was a firm other than Century), had demonstrated that they were "truly able to provide services that meet the John F. Kennedy Center contract standards, with [Firm A] lacking in some areas." Technical Review and Evaluation Report at 3. Millar's proposal was far more highly rated than Firm A's, receiving 100 percent of the available technical evaluation points versus 71 percent for Firm A. Id. at 6-7. Century's technical proposal received only 56 percent of the points possible, scoring 60 percent or less under all technical evaluation subfactors. Id. at 8. The evaluators noted that they considered the majority of Century's responses to the evaluation subfactors "to be marginal in terms of basic content and level of information the government seeks for evaluation purposes." Id.

The contracting officer considered the results of the technical evaluation, along with past performance information and price, in determining which proposal represented the best value to the government. She determined that Millar's proposal, which had received both the highest technical score and the best overall past performance ratings, and which was only 2 percent higher in price than Firm A's, represented the best value to the government. Contract Award Memorandum Without Discussions at 9. On September 22, she awarded a contract to Millar.

Century argues that it should have received the award because its proposal met or exceeded the technical requirements in the RFP and was lower priced than the awardee's.² As discussed below, however, the record shows that in fact the agency

¹ The evaluation of past performance was not contracted out; it was performed by the contracting officer.

² Century also asserts that the RFP improperly failed to set forth the relative importance of price and non-price factors. Solicitations must disclose the relative
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found that Century's proposal, as submitted, was not technically acceptable (although it may have been susceptible of being made acceptable through discussions). As a result, the agency was not required to consider Century's proposal for award notwithstanding its lower price. ITT Fed. Servs. Corp., B-250096, Jan. 5, 1993, 93-1 CPD ¶ 6 at 8; Elsinore Aerospace Servs., Inc., B-239672.6, Apr. 12, 1991, 91-1 CPD ¶ 368 at 6.

As noted above, Century's technical proposal scored 60 percent or lower on all of the technical evaluation subfactors. According to the scoring guidelines,³ a score of 60 percent signified (1) that "[t]he offeror ha[d] demonstrated an approach which fail[ed] to meet the stated requirements;" (2) that "[t]he response [was] considered marginal in terms of the basic content and level of information the Government [sought] for evaluation;" and (3) that "there [were] deficiencies, but they [were] susceptible to correction through discussions." Letter from Contracting Officer to Firm Selected to Perform Technical Evaluation attach. 1 (June 18, 1999). Among the deficiencies and weaknesses noted by the evaluators were the failure of the proposal to elaborate on the depth of the offeror's service teams; to "address training,

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weights of price and other factors. See 41 U.S.C. § 253a(c)(1)(C) (1994); Federal Acquisition Regulation (FAR) § 15.304(e). The RFP here, however, provided that the weight to be accorded price could be determined "only after a determination of the relative merits of the proposal from a past performance/technical standpoint and the significance of the difference." RFP § M.7.2.3. Although the RFP was thus defective, the defect was patent; accordingly, any protest of the impropriety was required to be filed prior to the time set for receipt of initial proposals, when the issue could easily have been resolved. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1999); Meridian Corp., B-246330.3, July 19, 1993, 93-2 CPD ¶ 29 at 5. Any protest of the terms of the solicitation is now untimely. Id. In any event, there is no basis to conclude that Century was prejudiced by this defect since, as explained further above, the agency reasonably found its proposal technically unacceptable and thus not eligible for award.

³ The contracting officer provided guidelines to the evaluators to use in scoring proposals. The 100 total points available were broken down into 20-point increments with corresponding definitions. Specifically, 100 percent of the points were to be awarded to a proposal with no deficiencies; 80 percent if there were no deficiencies and any weaknesses were minor and could be readily corrected; 60 percent if there were deficiencies, but they were susceptible to correction through discussions; 40 percent if the deficiencies were so extensive that a major revision to the proposal would be necessary to correct them; and 20 percent if the "offeror's failure is certain." Letter from Contracting Officer to Firm Selected to Perform Technical Evaluation attach. 1 (June 18, 1999).

personnel, logistics or operations of elevator/escalator team”;⁴ and to demonstrate that the offeror could furnish additional personnel when necessary. Technical Review and Evaluation Report at 8-9. The evaluators also noted that the offeror’s proposed quality control plan was conflicting in that it provided for the on-site mechanic to ride each unit and examine all major components of each elevator plant daily; according to the evaluators, “[t]he proximity and number of units involved [made] this impractical as it would leave little or no time to perform recommended ‘check chart’ preventive maintenance services.” Id. Based on these findings, both the technical evaluators and the contracting officer concluded that Century’s proposal was not technically acceptable. See id. at 3, 8; Contract Award Memorandum Without Discussions at 9; Contracting Officer’s Statement at 8.

Century does not take issue with the evaluators’ criticisms of its proposal or the scores that it received under the various technical evaluation subfactors, and we see no basis in the record to question the agency’s findings. Accordingly, given its conclusion that Century’s proposal was not technically acceptable, the agency was under no obligation to consider the proposal for award. ITT Fed. Servs. Corp., supra; Elsinore Aerospace Servs., Inc., supra.

Although Century does not challenge the scores its proposal received, it does argue that its proposal should not have been excluded from consideration because it was susceptible of being made acceptable through discussions. This argument is without merit.

The solicitation here advised offerors that the government intended to evaluate proposals and might award a contract without discussions, and that their initial proposals should therefore contain their best terms from a technical and cost or price standpoint. RFP § M.8.3. There is no requirement that the agency hold discussions where the solicitation advises offerors of the possibility of award without discussions. FAR § 15.306(a)(3); Kahn Instruments, Inc., B-277973, Dec. 15, 1997, 98-1 CPD ¶ 11 at 8. In such circumstances, the burden is on the offeror to submit an initial proposal containing sufficient information to demonstrate its merits, and an offeror failing to do so runs the risk of having its proposal rejected. Kahn Instruments, Inc., supra. Moreover, an agency is not precluded from awarding

⁴ The RFP instructed that: “The contractor must be able to demonstrate that management personnel are experienced and have received the appropriate training. The management team should demonstrate its ability to deal with personnel, logistics, and operations of an elevator/escalator team.” RFP § L.17.3.1.2, at 81.

on an initial proposal basis merely because an unacceptable lower offer could be made acceptable through discussions. Integration Techs. Group, Inc., B-274288.5, June 13, 1997, 97-1 CPD ¶ 214 at 6.

The protest is denied.

Comptroller General
of the United States